

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

CARD ACTIVATION TECHNOLOGIES, INC.,	)	
	)	
Plaintiff,	)	Civil Action No. 07-cv-6289
	)	
v.	)	Judge Ronald A. Guzman
	)	
THE TJX COMPANIES, INC.	)	Magistrate Judge Jeffrey Cole
	)	
Defendant.	)	
	)	
	)	

**PROPOSED DISCOVERY PLAN**

NOW COME the Plaintiff, CARD ACTIVATION TECHNOLOGIES, INC., and the Defendant, THE TJX COMPANIES, INC., through their respective attorneys, and submit the following Joint Status Report:

**A. Nature of the Case**

- (1) Bases for jurisdiction, nature of the claims and counterclaims: Plaintiff has filed an action for infringement of its United States Patent, No. 6,032,859 entitled "Method for Processing Debit Purchase Transactions Using a Counter-Top Terminal System". Jurisdiction for the claim is premised on 28 U.S.C. §§ 1331 and 1338(a). The Defendant has filed a Counterclaim against the Plaintiff. Jurisdiction for the Counterclaim is governed by 28 U.S.C. §§1331, 1338(a) and 2201. Defendant's Counterclaim alleges that the patent in suit is invalid and that the Defendant does not infringe the patent.
- (2) Relief sought by Plaintiff, including computation of claimed damages, if available: Plaintiff seeks damages from the Defendant in an amount no less than a reasonable royalty, plus interest and costs. Plaintiff is unable to make a computation of damages at this time. Plaintiff seeks to have the case deemed "exceptional" under 35 U.S.C. §285 and to obtain enhanced damages and attorneys fees. Defendant's Counterclaim

also seeks a finding that the case is exceptional and requests an award of fees in favor of the Defendant.

- (3) Names of any parties that have not been served: None.
- (4) Major legal issues: Whether Plaintiff's patent is valid and enforceable; whether Defendant infringes Plaintiff's patent; whether the case is exceptional pursuant to 35 U.S.C. §285; whether Plaintiff's claim for damages is limited by 35 U.S.C. § 287.
- (5) Major factual issues: Whether Defendant practices the method claimed in the patent in suit; whether the prior art discloses the limitations of each asserted claim of the patent in suit; whether Plaintiff is estopped from asserting that the patent-in-suit covers any accused product or method of the Defendant; whether Plaintiff's claims are barred by laches.
- (6) Related cases: The patent-in-suit in the present action has also been asserted by Plaintiff in the following actions, also pending before the Court:
  - a. *Card Activation Technologies Inc v. Barnes & Noble Inc et al*, Civil Action # 1:07-cv-01230 (Gottschall, J.).
  - b. *Card Activation Technologies, Inc. v. OfficeMax Incorporated*, Civil Action # 1:07-cv-02409 (St. Eve, J.).
  - c. *Card Activation Technologies, Inc. v. McDonald's Corporation et al*, Civil Action # 1:06-cv-05578 (Manning, J.).
  - d. *Card Activation Technologies, Inc. v. Sears Holding Corporation*, Civil Action # 1:06-cv-06485 (Manning, J.).

**B. Preparation of Draft Scheduling Order**

**Outline of the scheduling order required by Fed. R. Civ. 16 (b).**

- (1) Initial disclosures pursuant to Rule 26(a)(1) shall be completed by no later than March 14, 2008.
- (2) Any motion to amend or join additional parties shall be filed by July 31, 2008.
- (3) Non-Expert Discovery:
  - a. All non-expert discovery to be completed by January 30, 2009.

(4) Claim Construction:

- a. Parties to exchange lists of disputed claim terms requiring claim construction by August 29, 2008.
- b. Both parties shall submit Initial Markman briefs by September 26, 2008.
- c. Both parties shall submit Responsive Markman briefs by October 24, 2008.

(5) Expert Discovery:

- a. Expert Reports for the party bearing the burden of proof on the issues of infringement, damages, validity, enforceability and/or injunctive relief (“Opening Expert Reports”) shall be submitted to opposing counsel on or before (i) forty-five (45) days after the Court's claim construction ruling, or (ii) March 27, 2009, whichever is later.
- b. Responsive Expert Reports shall be submitted on or before (i) thirty (30) days following receipt of the Opening Expert Reports or (ii) April 24, 2009, whichever is later.
- c. Expert discovery shall be completed on or before (i) thirty (30) days following receipt of Responsive Expert Reports, or (ii) May 29, 2009, whichever is later.

(6) Dispositive Motions: All dispositive motions (including *Daubert* motions) shall be filed on or before (i) thirty (30) days following close of Expert discovery, or (ii) June 26, 2009, whichever is later.

(7) Electronically Stored Information: The parties agree that electronically stored information, if any, shall be produced in a multi-page tagged image file format (“TIFF”), and document level text files shall be produced with extracted full text or OCR, with a Summation dii image cross reference file and delimited load file with metadata as agreed by the parties and in accordance with the Federal Rules of Civil Procedure.

(8) Confidential Information: The parties agree to submit a proposed Protective Order governing the use or disclosure of confidential information produced in this case.

(9) Service by electronic means. The parties agree that service by electronic means shall be allowed as set forth in Fed. R. Civ. P. 5(b)(2)(D) and LR 5.9, and such service shall be considered complete as provided in the Federal Rules of Civil Procedure.

**C. Trial Status**

- (1) Whether or not a jury has been requested: A jury has been requested.
- (2) Probable length of the trial: 7 days.

**D. Consent to Proceed Before a Magistrate Judge.**

Parties do not consent to proceed before a Magistrate Judge for all proceeding including trial.

**E. Settlement Status**

- (1) The parties have briefly engaged in settlement discussions, which have not resulted in a settlement of this matter.

Dated: February 22, 2008

Card Activation Technologies, Inc.

The TJX Companies, Inc.

/s/ Mark D. Roth  
Mark D. Roth  
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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that he caused the foregoing ***PROPOSED DISCOVERY PLAN***, to be served on:

Keith H. Orum  
Mark D. Roth  
**ORUM & ROTH, LLC**  
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by ECF on this 21st day of February, 2008.

By:       /s/ Steven P. Mandell